

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4163 OF 1987

Kurian Babu,
Age 49, Adult, Occupation -Service,
R/o.Tamanna, 1, Viman Nagar,
Pune - 411 014.)
).. Petitioner
(Org.Applicant)

Vs.

Smt.Bhagwanti Sabunani,
Age Adult, Occ: Housewife,
R/o.25, Lulla Nagar,
Pune - 411 001.)
).. Respondent
(Org.Opponent)

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S/Shri S.R.Page holding for S.G.Page for the
Respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 14TH NOVEMBER, 2005.

ORAL JUDGMENT :

1. Heard the learned Advocate for the respondent.
Perused the records.

2. Neither the petitioner is present nor any one
on his behalf is present. However, the petitioner has
submitted his written submissions through post. They

are placed on record. The petitioner challenges the orders passed by Darkhast Court and the Revisional Court wherein the main grievance relates to the illegality on the part of the Courts below in going beyond the consent terms arrived at between the parties before the Court in the Civil Revision Application No.1001 of 1981 relating to the amount of arrears to the tune of Rs.16,960/-. The contention of the petitioner is that in terms of the consent terms arrived at in the said revision application on 29th November, 1982, the respondent/decreed holder had agreed to give up the claim for Rs.16,960/- being the amount was related to the arrears of rent for the period prior to November, 1982. On such agreement, the petitioner had agreed to vacate the premises by 29th November, 1985 and meanwhile to pay compensation at the rate of Rs.250/- per month from the date of consent terms till the date of delivery of possession by November, 1985. However, when the matter was lodged for execution proceedings in the court below, the executing Court was sought to be represented by the respondent/decreed holder that in terms of the consent terms relating to the waiver of amount of Rs.16,960/- was subject to the condition that delivery of possession ought to have been by 29th November, 1985, failing which, the decreed holder would be

entitled to recover the said arrears of Rs.16,960/-. Infact, there was no such consent term in the order passed by the High Court in the said revision application. It is also the grievance of the petitioner that time was sought by the petitioner to produce necessary evidence in that regard but the same was refused to the petitioner.

3. Both the Courts below have arrived at the concurrent findings on the point that sufficient opportunity given to the petitioner to lead necessary evidence regarding variance in the consent terms in relation to the amount of Rs.16,960/-, and regarding the failure of the petitioner to lead evidence in time. Indeed, the order passed by the revisional Court elaborately disclosed various opportunities given to the petitioner in that regard and failure on the part of the petitioner to lead necessary evidence in that respect. On that count alone, the contention of the petitioner was rejected.

4. However, perusal of the consent terms which were filed before the executing court and the order passed on the basis of the consent terms filed in the said revision application apparently discloses a clear variance between the consent terms approved by this

Court and those represented before the executing Court by the decree holder, particularly in relation to the amount of Rs.16,960/-. As rightly submitted by the petitioner in his written submissions, the clause (4) of the consent terms which were filed in this Court in the said revision application clearly provided that the respondent/decreed holder had agreed to give up the claim of amount of Rs.16,960/- i.e. the arrears towards payment of rent in relation to the suit flat. There was no clause in the said consent terms to the effect that in case of failure on the part of the petitioner to deliver possession of the suit flat by November, 1985, that the respondent/decreed holder would be entitled to recover an amount of Rs.16,960/-. While the clause (7) of the consent terms which were filed in the Executing Court clearly provided that in case the petitioner fails to deliver possession of the suit flat on or before 29th November, 1985, the decree holder would be entitled to take possession through Court and also to recover the said arrears of rent of Rs.16,960/-. Obviously, the consent terms filed before the Executing Court were beyond the scope of the consent terms filed and approved by the High Court in the revision application. Certainly the Executing Court was not entitled to go beyond the decree which was confirmed by this Court. It was obligatory for

the decree holder to bring to the notice of the Executing Court the factual position and true facts in the matter but it was equally obligatory for the decree holder to disclose to the Executing Court that he had agreed to waive the amount of Rs.16,960/- without any condition attached to it and there was no agreement arrived at between the parties before this Court to the effect that in case failure to deliver possession of the suit premises by the petitioner on or before 29th November, 1985 that the decree holder would be entitled to recover the said arrears of rent. Being so, merely because the petitioner had failed to lead evidence in that regard, the Courts below were not justified in allowing the respondent-decree holder to modify the consent terms which were arrived at before this Court without prior approval of this Court. On this count alone, the impugned orders cannot be sustained and the matter will have to be remanded to the Executing Court in relation to the grievance sought to be made by the petitioner pertaining to the variance in the consent terms. Needless to say that the possession of the suit premises which had already been delivered by the petitioner to the respondent need not be disturbed as it was required to be delivered in terms of the consent terms filed in this Court by 29th November,

1985.

5. In the result, therefore, the petition partly succeeds and the impugned orders to the extent stated above are hereby quashed and set aside, and the matter is remanded to the Small Causes Court, Pune, in Regular Darkhast No.804 of 1984 to deal with the grievance of the petitioner in relation to the variance in the consent decree alleged by the petitioner. Rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)